

ADVISORY OPINION

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RCW 42.52.150, RCW 42.52.160, RCW
42.52.180, WAC 292-110-010

SUMMARY OF CHANGES: Non-substantive scrivener's errors.

Use of Resources Questions and Answers

A. Use of State Resources

Question 1: Are there general guidelines for the use of state resources?

Answer: Yes. All state officers and employees have a duty to ensure the proper stewardship of state resources, including funds, facilities, tools, property, employees and their time. Accordingly, the Ethics in Public Service Act states that resources under your official control may not be used for the private benefit or gain of a state officer, state employee, or another person. (See RCW 42.52.160(1))

Question 2: What types of state resources are covered under the ethics law?

Answer: The guidelines on use of state resources apply to all resources **under an employee's control** including, but not limited to, facilities of an agency, state employees, computers, equipment, vehicles, and consumable resources. State resources also include state information, e.g., databases, employee lists. (See RCW 42.52.160(1) and RCW 42.52.180(1))

Question 3: What exactly is a "private benefit or gain"?

Answer: A private benefit or gain can range from avoiding a cost or expense by the use to using resources to support your outside business or paying a discounted government rate for a personal phone call. There are some uses that do not appear to have a cost but may result in private benefit or gain. For example, it may not cost a significant amount of money to use a state computer to access the Internet. Nevertheless, by making a personal use of a resource available to you only because you are a state employee, you are receiving a private benefit or gain.

Question 4: I've heard that de minimis use is allowed. What is a *de minimis* use anyway?

Answer: A de minimis use is an infrequent or occasional use that results in little or no actual cost to the state. An occasional brief local phone call to make a medical or dental appointment is an allowable de minimis use of state resources. The cost of a brief phone call is negligible and is not likely to interfere with your job. The following examples address “de minimis” use: (See WAC 292-110-010(3))

Example A: An employee makes a telephone call or sends an e-mail message to his/her children to make sure that they have arrived home safely from school. This is not an ethical violation. So long as the call or e-mail is brief in duration, there is little or no cost to the state, i.e., your long distance code is not used, and sending a brief message does not interfere with the performance of official duties.

Example B: An employee uses his/her agency computer to send electronic mail to another employee wishing them a happy birthday. This is not an ethical violation. The personal message is brief and does not interfere with the performance of official duties.

Example C: Every spring a group of employees meets during lunch to organize an agency softball team. The meeting is held in a conference room that is not needed for agency business during the lunch hour. This is not an ethical violation. There is little or no cost to the state, the meeting does not interfere with the performance of official duties, and off site recreational activities such as softball teams can improve organizational effectiveness.

Question 5: What does “organizational effectiveness” really mean?

Answer: Organizational effectiveness relates to an agency’s mission and encompasses activities that enhance or augment the agency’s ability to perform its mission. The Board recognizes that state agencies may allow employees to participate in activities that are not official state duties but promote organizational effectiveness by supporting a collegial work environment. The Board believes that so long as the employees who participate in the activity limit their use of state resources, then these activities would not undermine public confidence in state government. In addition, the Ethics Act normally prohibits the use of state resources to support outside organizations or groups, including charities, unless the support is part of the agency’s official duties. The Board’s rule allows agency heads to nevertheless approve limited use of state resources for activity that promotes organizational effectiveness even if that activity may incidentally support a private organization. Agency heads are cautioned, however, that activity allowed under this rule may not involve a state agency’s endorsement or promotion of a commercial activity such as advertising or selling products. The following examples address “supporting agency organizational effectiveness.” (See WAC 292-110-010(2)(b)(iii))

Example A: An agency determines that an agency wide retirement lunch will enhance organizational effectiveness. The retirement lunch will last a

half hour longer than the normal one hour lunch break. An employee uses his or her office computer to compose a flyer about the lunch, send a few reminder e-mails, and collect for a retirement present. This is not an ethical violation. The use supports organizational effectiveness and was approved by the agency. Since most of the activity takes place outside of normal working hours, it will not interfere with the performance of each employee's official duties. In addition, the employee's use of the office computer and printer will result in little or no cost to the state.

Example B: An agency decides that attending a specific sporting event or going to a local amusement park as a group will promote organizational effectiveness. In order to organize the event the agency uses a very limited amount of state paid time and agency resources to send one email notifying employees of the event and to post flyers and discount coupons in a break room so that employees who attend can take advantage of the discounts available. The flyers and coupons promote a commercial organization, such as a local amusement park, or promote a specific event, such as a state employee appreciation day at a sporting event. This is not an ethical violation. Attending the sporting event or going to an amusement park may improve employee morale, which supports organizational effectiveness. The agency approved this very limited use of resources and the activity falls within the limited use guidelines.

Example C: An agency decides that attending a specific sporting event or going to a local amusement park as a group will promote organizational effectiveness. The agency uses state paid time and agency resources to distribute multiple flyers or multiple discount coupons to all agency employees. The flyers and coupons promote a commercial organization, such as a local amusement park, or promote a specific event, such as a state employee appreciation day at a sporting event. This is an ethical violation. While attending the sporting event or going to the amusement park may improve employee morale, the use of state resources exceeds the limited use guidelines. When there is no statutory authority for the use of state resources to support a private commercial product or organization, the extensive use of state resources for that activity undermines public confidence in state government.

Question 6: Are there any uses of state resources that are prohibited?

Answer: Yes. The use is not considered de minimis if it is for the following: conducting an outside business; political or campaign activities; commercial uses like advertising or selling products; solicitation on behalf of other persons unless approved by the agency head; and illegal or inappropriate activities. The following examples address prohibited uses. (See WAC 292-110-010(3))

Example A: An employee operates an outside business. She makes an outside business call on her state telephone. The call is local. This is an ethical violation. The employee is conducting a private business on state

time using state resources, which is prohibited under WAC 292-110-010(3).

Example B: An employee puts a state telephone number or work address on business cards or letterhead for his/her outside business. Several customers contact the employee at the office number to conduct the outside business. This is an ethical violation. Although the use of the telephone may result in a negligible cost to the state, conducting a private business is an illegal use of state resources.

Example C: After working hours, an employee uses the office computer and printer to prepare client billings for a private business using his/her own paper. This is an ethical violation. Although use of the office computer and printer may result in a negligible cost to the state, conducting a private business is an illegal use of state resources.

Example D: One night an employee takes an agency owned video player home to watch videos of his/her family vacation. This is an ethical violation. Although there is little or no cost to the state, an employee may not make private use of state equipment.

Example E: An employee is assigned to do temporary work in another city away from his/her usual duty station. To perform official duties the employee takes an agency laptop computer. While away, the employee uses the computer to do tax work for a private client. This is an ethical violation. Although use of the laptop may result in a negligible cost to the state, conducting a private business is an inappropriate use of state resources.

Question 7: Can I play games on my computer during lunch and break times?

Answer: Generally, no. When employees download games or load interactive games onto state owned computers, the game play often involves several state employees or can undermine the security of state information and databases. In addition, the computer at your workstation remains a state resource regardless of whether you are working or on a break. Nevertheless, subject to your agency's prior approval a brief and occasional personal use, during lunch or break times, of a game that was preloaded by the manufacturer on your state computer would be allowed under the de minimis rule. (See WAC 292-110-010(3))

Question 8: If I use a state resource, can't I just reimburse my agency for the use?

Answer: No. Reimbursing for a personal use may result in a personal benefit and may impose significant administrative burdens on the state. For example, the price of a long distance call is less than you would pay using your local telephone company. Reimbursing also creates the misperception that personal use is ok as long as we pay for it. Personal use should be the exception not the rule. (See WAC 292-110-010(5))

Question 9: Does Advisory Opinion 03-03, covering the use of frequent flyer miles, also apply to other types of travel incentive programs?

Answer: Yes, this advisory opinion also applies to motel/hotel point rewards, rental car rewards, and any other travel benefit of a similar nature.

Question 10: Can an employee use, for personal reasons, software purchased by the agency if the software is required to be installed on the employee's home computer so that he/she may work at home?

Answer: Yes. While it is preferable that the employee pay for the software license, he or she may use the agency-purchased software for personal reasons so long as the use is de minimis. An employee may not use the software for outside business reasons or to assist either a campaign for public office or a ballot issue.

Question 11: Can a state employee use the electricity from a power outlet at a state owned or leased facility to charge a personal electric vehicle that is used to commute to work?

Answer: The Ethics in Public Service Act would not be violated if an employee were to use state resources to plug in a personal vehicle consistent with RCW 43.01.250.

B. E-Mail and Internet Use

Question 1: Can I send a personal e-mail message without violating the ethics law?

Answer: Yes. The general ethics standard is that any use of a state resource other than for official state business purposes needs to be brief in duration and frequency to ensure there is little or no cost to the state and the use does not interfere with the performance of official duties. Extensive personal use of state provided e-mail is not permitted. (See WAC 292-110-010(3))

Question 2: Are my e-mail or voice messages private?

Answer: No, if you use state equipment do not expect a right to privacy for any of your e-mail or voicemail communications. E-mail and voicemail communications may be considered public records and could be subject to disclosure. Aside from disclosure, employees should consider that e-mail communications are subject to alteration and may be forwarded to unintended recipients. Avoid these potential problems by treating e-mail communications as another form of business correspondence. (See WAC 292-110-010(4))

Question 3: Are there any restrictions on e-mail communications?

Answer: Yes. E-mail messages cannot be for any of the following uses: conducting an outside business; political or campaign activities; commercial uses like advertising or selling products; solicitation on behalf of other persons unless approved by the agency head; and illegal or inappropriate activities, such as harassment. In addition, broadly distributing or chain-mailing an e-mail that is not

related to official business is prohibited because it disrupts other state employees and obligates them to make a personal use of state resources. (See WAC 292-110-010(3))

Question 4: What are the guidelines on Internet use?

Answer: Just like the guidelines for e-mail discussed above, any personal use of state provided Internet access must be both brief and infrequent. Extensive personal use of state provided Internet access is not permitted. The following examples address uses of the Internet:

Example A: Several times a month an employee quickly uses the Internet to check his or her children's school website to confirm if the school will end early that day. The transaction takes about five minutes. This is not an ethical violation. The use is brief and infrequent, there is little or no cost to the state, and the use does not interfere with the performance of official duties.

Example B: An employee routinely uses the Internet to manage her personal investment portfolio and communicate information to her broker. This is an ethical violation. Using state resources to monitor private stock investments or make stock trades are private activities that can result in a private financial benefit or gain. Allowing even an occasional or limited use of state facilities to facilitate a private financial gain undermines public confidence in state government.

Example C: An employee spends thirty to forty minutes looking at various web sites related to a personal interest. This is an ethical violation. The use is not brief and can interfere with the performance of state duties.

Example D: An employee visits several humor and joke sites. While at a site, he/she downloads a joke file and e-mails it to several co-workers. This is an ethical violation. By e-mailing a file to co-workers the employee disrupts other state employees and obligates them to make a personal use of state resources. In addition, downloading files and distributing them to co-workers can introduce a computer virus, which can compromise state databases.

Question 5: What do I do if I access the wrong Internet site?

Answer: Don't panic! The best thing to do is to close the site/page and remember what it was that got you there and don't go back. Everyone makes this kind of mistake. It is also advisable to contact your supervisor or information systems staff to notify them of your mistake.

Question 6: Can I use my agency's computer and/or access the Internet for training or educational purposes, either personal or work related?

Answer: Yes, an agency may authorize the use of an agency's computer and/or access to the Internet for training or education that is related to official duties,

including career and educational development identified and approved by the agency, pursuant to RCW 41.06.410, and is documented by the agency as such. This training or education may be done on state time as approved by the agency, while other use of computers and/or access to the Internet for personal training or educational purposes is limited to an agency's de minimis use policy. Tuition-reimbursement training or education in itself does not authorize other than de minimis use where it is not related to official job duties.

Question 7: What are the guidelines for sending emails or using electronic bulletin boards on a state agency's intranet to notify state employees of diversity events or trainings that are sponsored by outside organizations?

Answer: Emails may be sent and postings may be made to electronic bulletin boards to notify state employees of diversity events or trainings that are sponsored by outside organizations if the email and posting are done in accordance with an agency policy that authorizes sending such emails and making such postings to promote or support organizational effectiveness. The policy should specify who is authorized to send emails and make postings. In the policy, the agency head or his/her designee would approve specific activities to promote organizational effectiveness and establish guidelines for limited use of state resources. (See WAC 292-110-010(2)(b)).

- Email notices may be forwarded to state employees of events or trainings from outside organizations that involve a cost of attendance, and do not specify that they are fundraisers.
- Email notices may not be forwarded to state employees of events or trainings from outside organizations that specify that they are fundraisers; that would violate RCW 42.52.160(1) and applicable agency policy.
- Postings may be made to electronic bulletin boards on a state agency's intranet of events and trainings sponsored by outside organizations that involve a cost of attendance and do not specify that they are fundraisers.
- Postings may not be made to electronic bulletin boards on a state agency's intranet of events and trainings sponsored by outside organizations that specify they are fundraisers; that would violate RCW 42.52.160(1) and applicable agency policy.

C. Use of State or Resources to Support Charities

Question 1: Can I use state resources to support charities?

Answer: The limited use of state resources to support charities may be allowed if an agency head or his/her designee approves the activity as one that promotes organizational effectiveness. Approval may be in the form of a specific policy that establishes guidelines for limited use of state resources. (See WAC 292-110-010(2)(b) and(3)(b)).

Question 2: Can you give me examples of limited uses that might be ok?

Answer: Yes. Sending an e-mail to notify employees of a blood drive would be a limited and acceptable use of state resources. Another example might be a bake sale to support an Adopt-A-Family Program. Here, the baking would be performed at home and after working hours. The baked goods are then displayed for purchase during break times and the lunch hour. When gifts are purchased for the family, the purchases are made after working hours.

Question 3: Is there anything employees shouldn't do while conducting charity work on state time?

Answer: Any use of state resources that results in an expenditure of funds should be avoided. Consider this scenario: a group of employees spend 6 working hours of staff time a week for over a four-week period to plan a charitable fund-raiser, and use the computer, fax, and copier to produce fund-raising materials. This is an expenditure of state funds that would not be considered a de minimis or limited use of state resources. In addition, state resources may not be used for the benefit of any other person, whether or not operated for profit, unless the use is within the course of official duties. The following example addresses another area of concern. (See WAC 292-110-010(2)(b)(i) and WAC 292-110-010(3))

Example: An employee is active in a local PTA organization that holds fund-raising events to send children to the nation's capital. Although a parental payment of expenses for the trip is expected, the more raised through individual contributions, the less the parent must pay. The employee uses agency e-mail to solicit contributions to the fund-raiser from a broad distribution list of co-workers. The e-mail asks each recipient to pass along the e-mail to other state employees. This is an ethical violation. The employee is using state resources to promote an outside organization and a private interest. By sending the e-mail to other state employees and asking state employees to pass the solicitation along, the employee is asking other state employees to improperly use state resources in a manner that interferes with the performance of official duties.

Question 4: What about the Combined Fund Drive?

Answer: The Combined Fund Drive is somewhat different than other independent charitable organizations because it has been established by the state legislature. Therefore, it is part of the official duties of those employees who are assigned by the agency to conduct the Drive. Fund Drive coordinators should confine the time and effort spent conducting the drive to agency guidelines. (See WAC 292-110-010(2)(b) and (3)(b) and EEB Advisory Opinion 00-09)

Question 5: What about the employees who are not officially assigned to conduct the Combined Fund Drive?

Answer: As noted above with charitable groups, the use of state resources to support the Combined Fund Drive charities should be reasonable, involve little or

no cost the agency, and should not disrupt the conduct of official business in state offices. (See WAC 292-110-010(3)(b))

Question 6: How about agency participation in commercial activity that benefits the Combined Fund Drive?

Answer: State agencies should avoid direct involvement in commercial activity even if the proceeds may benefit the Combined Fund Drive. Examples of improper direct involvement include distributing commercial product sales brochures and order forms to agency employees, collecting product order forms in the workplace or on state paid time, and distributing products in the workplace or on state paid time. Activities permitted under the de minimis rule, such as those described in the answer to Question 15, should not involve commercial activities. (See WAC 292-110-010(3))

D. Solicitations by State Employees on Behalf of Charitable Organizations

The solicitation of goods and services from private companies is addressed under several provisions of the Ethics in Public Service Act. In addition to interpreting and applying the use of state resources provisions, this section of questions and answers is intended to provide examples of how the Board would interpret and apply RCW 42.52.070, 42.52.140, and 42.52.150 to common occurrences in the state workplace.

Question 1: Can agency employees solicit donations for charitable events from outside businesses?

Answer: The state's ethics law contains a very strong presumption against solicitation by any state officer or state employee for any purpose, including charitable events. Solicitation by state employees can create the appearance that a donation might result in favorable treatment from the state, whereas a failure to donate might result in unfavorable treatment. A state officer or state employee whose official duties include regulation or the contracting for goods and services needs to be especially careful about solicitation. Accordingly, State officers and employees may not use their official state positions to solicit goods and services from private organizations and businesses. The following examples address solicitation on behalf of charitable organizations. (See RCW 42.52.070, RCW 42.52.140 and RCW 42.52.150(4))

Example A: The head of a state agency purchasing office sends a letter requesting gifts or donations for use at a CFD kick off luncheon to several vendors who provide goods and services to the agency. This is an ethical violation. While the purchasing supervisor will not personally benefit from the gifts, the CFD charities and the gift recipients would benefit from them. In addition, it would be reasonably expected that vendors who respond favorably to the solicitation did so with the intent to influence the vote, action, or judgment of the purchasing supervisor. (See RCW 42.52.070 and RCW 42.52.140)

Example B: The head of a state agency sends a letter to local businesses, including several vendors who provide goods and services to the agency, requesting gifts or donations for a use that will benefit agency employees and a private charity. This is an ethical violation. While the agency head will not personally benefit from the gifts, the private charity would benefit from them. In addition, it would be reasonably expected that vendors who respond favorably to the solicitation did so with the intent to influence the vote, action, or judgment of the agency head. This expectation in the vendors would be true even if the agency head did not routinely participate in such decisions. (See RCW 42.52.070 and RCW 42.52.140)

Example C: On their lunch break a group of agency employees who work for an agency that regulates or administers benefits for private business, but who are not personally involved in regulating or administering benefits for their agency, solicit holiday gifts on behalf of a family sponsored by Adopt-a-Family. When soliciting the gifts they voluntarily inform the businesses that they are employed by their state agency but are soliciting on behalf of the sponsored family or Adopt-a-Family. This is an ethical violation. By stating that they are employed by an agency that regulates or administers benefits for the private businesses they are using their state positions to influence the private businesses and support the private charity. (See RCW 42.52.070)

Example D: On their lunch break or after work a group of agency employees who are involved in regulating or contracting on behalf of their agency solicit holiday gifts on behalf of a family sponsored by Adopt-a-Family. They do not solicit from agency vendors or other individuals with whom they conduct state business. When soliciting the gifts they tell the businesses that they are soliciting on behalf of the sponsored family or Adopt-a-Family. This is not an ethical violation. By soliciting on behalf of the private charity and not a state agency they are not using their state positions to influence the private businesses. In addition, the employees are not using state paid time or resources for the solicitation.

Example E: After work or on the weekend a group of state employees solicit holiday gifts on behalf of a family sponsored by Adopt-a-Family or their local private school. They solicit door to door in their neighborhood and do not solicit from agency vendors or other individuals with whom they conduct state business. When soliciting the gifts they indicate that they are soliciting on behalf of the private school, the sponsored family, or Adopt-a-Family. This is not an ethical violation. The employees are not using their state positions to influence the private businesses and are not using state resources to support the private charities.

Question 2: Are there any other considerations we should take into account when conducting charitable solicitations?

Answer: Yes, avoid direct personal solicitations of your co-workers and colleagues and opt for voluntary participation. Managers and supervisors should always avoid

direct personal solicitations of employees who work under their supervision. In this way, employees avoid creating a situation in which others feel pressured to give or perceive the risk of an unfavorable job action if they fail to give. Please remember that our valuable dedication to helping others sometimes obscures the fact that those we ask to give may not be able to give or may chose to give to other charities.

Question 3: If we can't solicit, then what should we do?

Answer: A state employee may purchase a gift certificate or other item for its fair market value and donate the item to an agency-sponsored charitable event.

E. Political or Campaign Buttons, Bumper Stickers, Signs

Question 1: During the last election, several co-workers wore large political buttons promoting a candidate that I opposed. One co-worker hung a political sign in his work space promoting the passage of an initiative that would impact our agency. Another co-worker placed several political yard signs in the window of her van and parked it in the agency lot. Isn't political campaigning in the work place prohibited?

Answer: Yes, the Ethics in Public Service Act prohibits a state officer or employee from using state facilities to support or oppose political campaigns. "Facilities" is broadly defined and includes agency office space and working hours. Personal clothing and personal vehicles, however, would not be considered an agency facility. Therefore, the Ethics Act would not absolutely prohibit an agency policy that permits wearing typical political buttons on an individual's clothing or affixing a political bumper sticker to a personal vehicle. Officials or employees who wear political pins or buttons are urged to exercise caution and prudence. Closely related activity in the state workplace, such as wearing political buttons while interacting with the public or displaying political signs in public areas, could result in prohibited campaigning or violate agency policy. In determining if certain activity violates the Ethics Act the Board would determine if the conduct would lead a reasonable person to believe that the state officer or employee was making a political endorsement. The Board may review and approve agency policies adopted to prevent agency employees from violating the Act. (See RCW 42.52.180, WAC 292-110-010(6)).